

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
	)	CSR-5895-E
Charter Cable Partners, LLC d/b/a	)	
Charter Communications	)	
	)	
Petition for Determination of Effective	)	
Competition in Wisconsin Rapids, WI	)	
(CUID No. WA0062)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 24, 2002**

**Released: October 25, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Charter Cable Partners, LLC, d/b/a Charter Communications ("Charter") has filed with the Commission a petition pursuant to Sections 76.7 and 76.907 of the Commission's rules seeking a finding of effective competition in Wisconsin Rapids, Wisconsin. Charter alleges that its cable system serving the City of Wisconsin Rapids is subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"),<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation. Charter claims the presence of effective competition in Wisconsin Rapids stems from the competing services provided by Wood County Telephone Company ("WCTC"), a franchised cable operator that also provides local exchange carrier ("LEC") service in Wisconsin Rapids. No opposition to this petition was filed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming

---

<sup>1</sup> 47 U.S.C. § 543(a)(2).

<sup>2</sup> 47 C.F.R. § 76.905(b)(4).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.<sup>6</sup>

3. The Commission has stated that an incumbent cable operator could satisfy the “LEC” effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.<sup>7</sup> The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.<sup>8</sup>

## II. DISCUSSION

4. Charter operates a cable television system in Wisconsin Rapids for which it seeks a determination of effective competition. Charter has provided information demonstrating that WCTC is a telephone company that provides local exchange and other telephone services within Wisconsin Rapids.<sup>9</sup> Therefore, WCTC qualifies as a “LEC” for purposes of the “LEC effective competition” test.<sup>10</sup>

5. In addition to qualifying as a LEC, WCTC was awarded a 5-year franchise for the provision of cable service within the City of Wisconsin Rapids on December 15, 1999.<sup>11</sup> Based upon the observations of its local personnel, Charter believes that WCTC’s Wisconsin Rapids cable system passes 100% of the households in Wisconsin Rapids.<sup>12</sup> This belief is strengthened by the requirement in WCTC’s cable franchise that it provide cable service to the entire City of Wisconsin Rapids by December 15, 2001.<sup>13</sup> WCTC has also distributed marketing materials within Wisconsin Rapids pointing out that residents of the City need only call WCTC for installation of its cable services.<sup>14</sup>

6. WCTC’s marketing materials and website show that its cable service offers 100 channels of video programming that includes non-broadcast programming services such as ESPN, HBO CNN, as well as a complement of local television broadcast stations, such as WJFW-TV (NBC), WAOW-TV (ABC), and

---

<sup>6</sup> 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test within Section 632(l) may be referred to as the “LEC” effective competition test.

<sup>7</sup> *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

<sup>8</sup> *Id.*

<sup>9</sup> Charter Petition at 3 and Exhibit 1.

<sup>10</sup> *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

<sup>11</sup> Charter Petition at Exhibit 3.

<sup>12</sup> *Id.* at 4 and Exhibit 4.

<sup>13</sup> *Id.* at Exhibit 3.

<sup>14</sup> *Id.* at 5-6 and Exhibits 2, 5-7 (consisting of direct marketing materials, newspaper advertisements, and web site materials (*see* <<http://www.wctcinvision.com>>)).

WSAW-TV (CBS).<sup>15</sup> This complement of programming services compares closely with the programming available on Charter's system.<sup>16</sup> Therefore, WCTC provides comparable programming as required by the "LEC" effective competition test. Charter's petition also provides substantial evidence that there are no regulatory, technical or other impediments to WCTC's provision of cable service within Wisconsin Rapids,<sup>17</sup> and that WCTC is able to provide cable service that substantially overlaps Charter's service.<sup>18</sup>

7. Charter has also shown that WCTC has commenced providing cable service within Wisconsin Rapids, is marketing its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfies the "LEC" effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.<sup>19</sup> Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that its cable system serving Wisconsin Rapids, Wisconsin is subject to effective competition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition in Wisconsin Rapids, Wisconsin filed by Charter **IS GRANTED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

---

<sup>15</sup> *Id.* at 6-7 and Exhibits 2, 7.

<sup>16</sup> *Id.* at Exhibit 8.

<sup>17</sup> *Id.* at 4-5 and Exhibits 3-7.

<sup>18</sup> *Id.* at Exhibit 4 (indicating that 1,595 former Charter subscribers have discontinued service in favor of WCTC's cable services and that WCTC has a 30% penetration rate in Wisconsin Rapids).

<sup>19</sup> *Id.* at 4-6 and Exhibits 2, 4-7. *See Cable Reform Order*, 14 FCC Rcd at 5305.

<sup>20</sup> 47 C.F.R. § 0.283.